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8 JOHN VARIAN, TIMOTHY P. WALBERT,
PAUL D. RUBIN AND JACK L. WYSZOMIERSKI
9 and Nominal Defendant XOMA CORPORATION

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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 DEBORAH A. FIESER, derivatively on
16 behalf of XOMA CORPORATION,

17 Plaintiff,

18 v.

19 W. DENMAN VAN NESS, WILLIAM K.
BOWES, JR., PETER BARTON HUTT,
20 JOSEPH M. LIMBER, KELVIN M. NEU,
PATRICK J. SCANNON, JOHN
21 VARIAN, TIMOTHY P. WALBERT,
PAUL D. RUBIN AND JACK L.
22 WYSZOMIERSKI and Nominal Defendant
XOMA CORPORATION,

23 Defendants.
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Case No. 4:15-CV-05236-HSG

**STIPULATION AND ORDER TO EXTEND
TIME FOR DEFENDANTS TO RESPOND TO
COMPLAINT AND RESCHEDULE CASE
MANAGEMENT CONFERENCE**

Judge: Honorable Haywood S. Gilliam

Pursuant to Civil Local Rules 6-1, 6-2, and 7-12 Plaintiff Deborah A. Fieser (“Plaintiff”) and Defendants W. Denman Van Ness, William K. Bowes, Jr., Peter Barton Hutt, Joseph M. Limber, Kelvin M. Neu, Patrick J. Scannon, John Varian, Timothy P. Walbert, Paul D. Rubin, Jack L. Wyszomierski, and Nominal Defendant XOMA Corporation (collectively, “Defendants”), by and through their respective counsel, hereby agree and stipulate that good cause exists to request an order from the Court extending Defendants’ deadline to respond to the Complaint until April 4, 2016 and rescheduling the initial Case Management Conference currently set in this action for March 22, 2016 to May 10, 2016, and to adjust accordingly the related deadlines set forth therein.

WHEREAS, Joseph Markette filed a securities class action lawsuit against XOMA, John Varian, and Paul Rubin relating to XOMA’s EYEGUARD-B study in the United States Court for the Northern District of California, captioned *Markette v. XOMA Corp., et. al.*, 3:15-CV-3425-HSG, on July 24, 2015;

WHEREAS, Plaintiff Deborah A. Fieser filed this related shareholder derivative action, captioned *Fieser v. W. Denman Van Ness, et. cal.*, Case No. 4:15-CV-05236, on November 16, 2015 (“*Fieser Complaint*”);

WHEREAS, on January 11, 2016, Magistrate Judge Kandis A. Westmore entered an order extending Defendants’ time to respond to the *Fieser Complaint* from January 19, 2016 to February 19, 2016 and rescheduling the case management conference to March 22, 2016;

WHEREAS, on January 12, 2016, Judge Westmore referred this action to this Court to determine whether it should be related to *Markette v. XOMA Corp., et. al.*;

WHEREAS, on January 25, 2016, this Court entered an order relating this action to *Markette v. XOMA Corp., et. al.*, and reassigning it to Judge Haywood S. Gilliam;

WHEREAS, in an effort to avoid duplication of effort and maximize judicial economy, the parties have been discussing various case management procedures, including a potential stay of this action pending further developments in *Markette v. XOMA Corp., et. al.*, but have yet to

1 reach agreement;

2 WHEREAS, in order to conserve party and Court resources, Plaintiff and Defendants
3 agree to extend Defendants' deadline to respond to the *Fieser* Complaint to April 4, 2016 to
4 provide the parties with additional time to reach agreement regarding case management
5 procedures, including a potential stay of this action;

6 WHEREAS Plaintiff and Defendants further agree that the initial Case Management
7 Conference should be rescheduled for May 10, 2016 and that all associated deadlines (including
8 ADR deadlines) be rescheduled accordingly.

9 WHEREAS this stipulation shall not be deemed a waiver of any rights or defenses by any
10 party, including, but not limited to, the right of the Defendants to raise personal and subject
11 matter jurisdiction issues or to file any motions to dismiss or motions, the right to object to any
12 discovery requests on any grounds, and this stipulation shall in no way constitute an appearance
13 for the purpose of personal jurisdiction over any party;

14 NOW THEREFORE, THE FOLLOWING IS HEREBY STIPULATED by and between
15 the parties, through their respective counsel:

- 16 1. To avoid duplicative efforts and promote judicial economy, Defendants shall have
17 no obligation to respond to the *Fieser* Complaint until April 4, 2015.
- 18 2. The scheduled initial Case Management Conference will be rescheduled to May
19 10, 2016 and all related deadlines (including ADR deadlines) will be adjusted
20 accordingly.

21 IT IS SO STIPULATED.

1 Dated: February 2, 2016

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7 */s/ Jessica Valenzuela Santamaria*

8 Jessica Valenzuela Santamaria (220934)

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15 CORPORATION

16 Dated: February 2, 2016

17 GREEN & NOBLIN, P.C.
18 ROBERT S. GREEN (136183)
19 JAMES ROBERT NOBLIN (114442)

20 And

21 FEDERMAN & SHERWOOD
22 WILLIAM B. FEDERMAN


23 */s/ Robert S. Green*

24 Robert S. Green (136183)

25 Attorneys for Plaintiff DEBORAH A. FIESER

26 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

27 DATED: February 8, 2016

28 
Honorable Haywood S. Gilliam, Jr.
United States District Judge

ATTESTATION OF CONCURRENCE IN FILING

Pursuant to Local Rule 5-1 of The United States District Court for the Northern District of California, I, Jessica Valenzuela Santamaria, hereby attest that the concurrence to the filing of the foregoing document has been obtained from Robert S. Green, who provided the conformed signature above.

Dated: February 2, 2016

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